IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs February 26, 2009

ALDEN JOE DANIEL, JR. v. ROBERT TAYLOR, ET AL.

Appeal from the Circuit Court for Bradley County
No. V-08-093 Lawrence H. Puckett, Judge

No. E2008-01248-COA-R3-CV - FILED MARCH 25, 2009

Several years ago, Alden Joe Daniel, Jr., ("Plaintiff") pled guilty to five counts of statutory rape, two counts of sexual battery, and one count of rape. After serving a nine-year prison sentence, Plaintiff inspected the district attorney's file in his criminal case. Upon doing so, Plaintiff discovered what he claims were slanderous comments made about him by four individuals; namely, Robert Taylor, Whitney Harding, Janice Lambert, and Jeff Brown. Plaintiff, proceeding pro se, sued these four defendants and brought various claims, including claims for slander and invasion of privacy. The Trial Court dismissed all of the claims after determining that the statute of limitations for each claim had expired long before Plaintiff filed his lawsuit. Plaintiff appeals the dismissal of the slander and invasion of privacy claims. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Case Remanded

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. MCCLARTY, J., joined.

Alden Joe Daniel, Jr., pro se Appellant.

Peggy L. Tolson, Brentwood, Tennessee, for the Appellees, Robert Taylor and Whitney Harding.

Charles W. Cagle, Nashville, Tennessee, for the Appellees, Janice Lambert and Jeff Brown.

OPINION

Background

This is a slander and invasion of privacy lawsuit filed by Plaintiff on February 4, 2008. Plaintiff sued Robert Taylor, Whitney Harding, Janice Lambert, and Jeff Brown. The complaint is difficult to understand. According to the complaint:

> The Plaintiff in August of 2000 entered into an illegal plea caused by fraud and threats to prosecute the Plaintiffs (sic) family and 13 former basketball players and their family's (sic). . . .[1]
>
> Sometime before May 3, 1999 and without Plaintiff's knowledge[,] Defendants Robert (Bob) Taylor and Whitney Harding both gave statements to Tony Alvarez[2] that were not only false but successfully Intended to Slander and verbally assault and an Invasion of Privacy of the Plaintiff to cause unwanted Damages to both the Plaintiff and his family. . . .
>
> Sometime before May 3, 1999 and without Plaintiff's Knowledge, Defendant Janice Lambert did speak with Mrs. Harding . . . in a successful attempt to further the Slander and Fraud with the verbal

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[1] Not surprisingly, Plaintiff says very little about the criminal charges brought against him or his guilty plea. The background of these criminal charges was discussed in *Daniel v. State*, No. E2002-02838-CCA-R3-PC, 2003 WL 22187067 (Tenn. Crim. App. Sept. 23, 2003) wherein the Court of Criminal Appeals affirmed the denial of Plaintiff's petition for post-conviction relief. In so doing, the Court of Criminal Appeals provided the following background:

> Petitioner was indicted on thirteen counts of statutory rape, sexual battery and rape stemming from allegations by various members of the girls' basketball team that Petitioner coached during the summer. After he was indicted, Petitioner fled the state and was apprehended approximately six months later. Following his return to Tennessee to stand trial, Petitioner was convicted of flight to avoid prosecution, but the jury could not reach a verdict as to the sexual offense charges. A second trial commenced later that summer. During the selection of the jury, a recess was called to explore the possibility of a plea settlement. After negotiations, Petitioner pled guilty to five counts of statutory rape, two counts of sexual battery and one count of rape with an effective sentence of nine years. This sentence was substantially less than the potential sentence Petitioner faced if he proceeded to trial and less than the twelve-year effective sentence initially offered by the State. In addition, the State agreed not to prosecute Petitioner's father, mother, former wife and daughter for perjury and/or for aiding Petitioner while he was a fugitive.

Daniel, 2003 WL 22187067, at *1.

[2] Tony Alvarez is a police detective who at that time was investigating the rape allegations made against Plaintiff. Defendants Robert Taylor and Whitney Harding worked at Michigan Avenue Elementary School, where Plaintiff occasionally worked as a substitute teacher.

> assault and an Invasion of Privacy to cause the Plaintiff and his family unwanted pain and suffering as well as other damages.
>
> Sometime before May 3, 1999 and without Plaintiff's knowledge[,] Mr. Robert Morris did over hear (sic) a conversation between Robert (Bob) Taylor and Jeff Brown in which Mr. Brown informed Mr. Taylor of a sexual crime on a backpacking trip to Blood Mountain Georgia where [Plaintiff] allegedly exposed himself to [A.C.] while Mr. Brown was a chaperone on that trip in a further successful attempt to slander and present fraud with verbal assaults and an Invasion of Privacy to cause the Plaintiff and his family unwanted pain and suffering and other damages. . . . (footnote added)

Plaintiff further claimed that he did not discover the slanderous statements until he was released from prison and was granted permission to inspect the criminal file in the possession of the district attorney's office. Plaintiff claimed he discovered the slanderous comments on August 14, 2007. After reading his criminal case file, Plaintiff filed this lawsuit against the four defendants alleging claims for slander, invasion of privacy, and outrageous conduct. Plaintiff sought $500,000 in compensatory damages and an additional $500,000 in punitive damages.

Plaintiff attached to the complaint a memo that was contained in the district attorney's file. That memo, dated May 3, 1999, discusses the investigation then being conducted by Detective Alvarez. According to this memo, Det. Alvarez spoke with Robert Taylor about Plaintiff. As noted, Mr. Taylor worked at an elementary school where Plaintiff on occasion was a substitute teacher. Det. Alvarez' notes state:

> Mr. Taylor said he has never had any personal problems with [Plaintiff] although he received a complaint from a parent whose child was in a class that [Plaintiff] was substituting. He said the parent didn't want [Plaintiff] substituting in her son's class because of some rumors she had heard about [Plaintiff] at her work place (Bradley Memorial Hospital).
>
> Mr. Taylor called in one of his teachers (Ms. Harding) who worked at the Bradley Memorial Hospital in the same department [as Plaintiff]. He advised her about the complaint made against [Plaintiff] and asked her if she had any knowledge of any inappropriate behavior concerning [Plaintiff]. He said Ms. Harding told him she had only heard rumors at the hospital where she was working . . . and that said rumors were of a negative sexual nature.

Det. Alvarez then spoke with Ms. Harding who stated that the rumors she had heard were that Plaintiff would recruit people to make out with his wife at his house while he would watch them. Harding also stated "that she didn't know how the rumors came about." Harding pointed out that she never witnessed anything improper.

It is unclear exactly what defendant Lambert said that Plaintiff considers to be slanderous. In his brief on appeal, the Statement of Facts section of Plaintiff's brief is one short paragraph long, makes no mention whatsoever of any alleged statements by any of the defendants, and contains no citations to the record. With respect to Ms. Lambert, Det. Alvarez' memo states only that "[Ms. Harding] said I may wish to speak with Ms. Janice Lambert who also worked at the same department and who is still with the hospital at the MRI Department. Ms. Harding further stated that Ms. Lambert was also aware of the rumors that were circulating at the hospital during that time frame."[3]

Defendants Taylor and Harding filed a motion to dismiss claiming that all of Plaintiff's claims as to them were barred by the statute of limitations contained in the Governmental Tort Liability Act (GTLA), Tenn. Code Ann. § 29-20-305(b). Defendants Lambert and Brown also filed a motion to dismiss claiming the statute of limitations on Plaintiff's claims against them had expired as well. The Trial Court dismissed all of the claims against the defendants after concluding that Plaintiff's lawsuit had been filed outside the applicable statute of limitations for each claim.

Plaintiff appeals raising numerous issues. In his statement of the issues, Plaintiff challenges the dismissal of his slander and invasion of privacy claims. As to these causes of action, he claims that the statutes of limitations did not run because of application of the discovery rule. Our resolution of the issues with respect to the statutes of limitations is dispositive of this appeal.

Discussion

Our standard of review as to the granting of a motion to dismiss is set out in *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714 (Tenn. 1997). In *Stein*, our Supreme Court explained:

> A Rule 12.02(6), Tenn. R. Civ. P., motion to dismiss for failure to state a claim upon which relief can be granted tests only the legal sufficiency of the complaint, not the strength of a plaintiff's proof. Such a motion admits the truth of all relevant and material averments contained in the complaint, but asserts that such facts do not constitute a cause of action. In considering a motion to dismiss, courts should construe the complaint liberally in favor of the plaintiff, taking all allegations of fact as true, and deny the motion unless it appears that the plaintiff can prove no set of facts in support of her claim that would entitle her to relief. *Cook v. Spinnaker's of Rivergate, Inc.*, 878 S.W.2d 934, 938 (Tenn. 1994). In considering this appeal from the trial court's grant of the defendant's motion to dismiss, we take all allegations of fact in the plaintiff's complaint as true, and review the lower courts' legal conclusions *de novo* with no presumption of correctness. Tenn. R. App. P. 13(d); *Owens v.*

[3] Of course, simply being "aware" of rumors is insufficient as a matter of law to state a claim for slander.

> *Truckstops of America*, 915 S.W.2d 420, 424 (Tenn. 1996); *Cook, supra*.

Stein, 945 S.W.2d at 716.

As mentioned, defendants Taylor and Harding were employed by the school system where Plaintiff occasionally worked. Plaintiff affirmatively stated at the hearing on the motion to dismiss that these two defendants were being sued in their official capacity. Relying on this concession when dismissing the complaint as to these two defendants, the Trial Court stated "the pro se Plaintiff agreed in open court that Defendants Robert Taylor and Whitney Harding were sued in their official capacities and thus, the Plaintiff's complaint was filed outside the applicable statute of limitations under the Tennessee Governmental Tort Liability Act."

The GTLA removes immunity from suit against "any political subdivision of the state of Tennessee including . . . [any] school district . . . ." Tenn. Code Ann. § 29-20-102(3)(A) (Supp. 2008). In pertinent part, Tenn. Code Ann. § 29-20-205 (2000) provides as follows:

> Immunity from suit of all governmental entities is removed for injury proximately caused by a negligent act or omission of any employee within the scope of his employment *except if* the injury arises out of:
>
> * * *
>
> (2) false imprisonment pursuant to a mittimus from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, *libel*, *slander*, deceit, interference with contract rights, infliction of mental anguish, *invasion of right of privacy*, or civil rights . . . . (emphasis added)

Because the General Assembly has not removed immunity from suit for the two remaining claims brought by Plaintiff, i.e., slander and invasion of privacy, the Trial Court correctly dismissed these claims against Defendants Taylor and Harding as they are immune since the claims were brought against them in their official capacity only.

We next will discuss the slander and invasion of privacy claims brought against Lambert and Brown, who are non-governmental defendants. In *West v. Media General Convergence, Inc*., 53 S.W.3d 640 (Tenn. 2001), our Supreme Court explained that according to the Restatement (Second) of Torts, there are four categories of invasion of privacy claims:

> Section 652A of the *Restatement (Second) of Torts* (1977) incorporated Dean Prosser's four categories of invasion of privacy:
>
> (1) One who invades the right of privacy of another is subject to liability for the resulting harm to the interests of the other.

> (2) The right of privacy is invaded by:
>
> (a) unreasonable intrusion upon the seclusion of another, as stated in § 652B; or
>
> (b) appropriation of the other's name or likeness, as stated in § 652C; or
>
> (c) unreasonable publicity given to the other's private life, as stated in § 652D; or
>
> (d) publicity that unreasonably places the other in a false light before the public, as stated in § 652E.

Media General, 53 S.W.3d at 643.

The first two categories do not apply in this case as Plaintiff's seclusion was not intruded upon and his name or likeness was not appropriated. The third category does not apply because this category applies to statements that are true[4], and the whole point of Plaintiff's lawsuit is that the statements allegedly were false. This leaves us with the fourth and final category, i.e., publicity that unreasonably places someone in a false light before the public. In *Media General*, the Supreme Court specifically held that "false light [invasion of privacy] should be recognized as a distinct, actionable tort" in Tennessee. *Id*. at 645.

Having determined that a false light claim is a viable tort in this State, we next must determine the statute of limitations for a false light invasion of privacy claim. The statute of limitations for a slander claim is only six months. *See* Tenn. Code Ann. § 28-3-103 (2000) ("Actions for slanderous words spoken shall be commenced within six (6) months after the words are uttered."). In *Media General*, after concluding that a false light invasion of privacy claim was a viable claim in Tennessee, the Court also held that this claim would have the same statute of limitations as a corresponding defamation claim, depending on whether the claim was based upon spoken words or in fixed form, such as a writing. According to the Court:

> Finally, we recognize that application of different statutes of limitation for false light and defamation cases could undermine the effectiveness of limitations on defamation claims. Therefore, we hold that false light claims are subject to the statutes of limitation that apply to libel and slander, as stated in Tenn. Code Ann. §§ 28-3-103 and 28-3-104(a)(1), depending on the form of the publicity, whether in spoken or fixed form.

[4] The Special Note following Restatement (Second) of Torts § 652D states that "[t]his Section provides for tort liability involving a judgment for damages for publicity given to true statements of fact."

Media General, 53 S.W.3d at 648. Thus, Plaintiff's slander and false light invasion of privacy claims both have a six month statute of limitations. According to the complaint, the events giving rise to this lawsuit occurred on or before May 3, 1999. This lawsuit was filed over 8½ years later. These claims unquestionably were filed after the statutes of limitations expired.

Because both the slander and invasion of privacy claims were filed after the statutes of limitations had expired, the question then becomes whether the discovery rule applies to these two claims as argued by Plaintiff. In *Quality Auto Parts Co., Inc. v. Bluff City Buick Co. Inc.*, 876 S.W.2d 818 (Tenn. 1994), our Supreme Court concluded that the discovery rule does not apply to slander claims. Specifically, the Court stated:

> We conclude that the rationale for declining to apply the discovery rule to defamation statutes of limitations is persuasive. Typical situations in which the discovery rule has been applied involved distinct and usually physical injuries developing long after the defendant's negligent conduct occurred, and after the statute of limitations expired. In contrast, the injury to character and reputation upon which a slander action is based develops and is complete at the moment the slanderous words are uttered. Moreover, the policies upon which statutes of limitations are based, i.e., preventing stale claims and preserving evidence, are especially applicable to slander actions because of the intangible nature of the evidence, spoken words, and of the injury itself, damage to character and reputation. *Kelley v. Rinkle*, 532 S.W.2d 947, 949 (Tex. 1976). Finally, as the federal district court recognized in *Heller v. Smither,* [437 F. Supp. 1 (M.D. Tenn. 1977)] . . . the language of Tennessee's slander statute of limitations sets forth "a positive and distinct event that triggers the running of the limitations period - the utterance of the alleged defamatory words." *Id*. at 5.
>
> Based on the foregoing reasoning, we conclude that the discovery rule does not apply to Tennessee's slander statute of limitations; and accordingly, Kimbrow's claim for slander is time barred.

Quality Auto Parts, 876 S.W.2d at 821-22.

As just quoted, the Court in *Quality Auto Parts* concluded that the discovery rule does not apply to slander claims for several reasons, including the "intangible nature of the evidence, spoken words, and of the injury itself, damage to character and reputation." Identical concerns are present with regard to false light invasion of privacy claims based upon spoken words. *Media General* clearly requires that Plaintiff's slander and false light invasion of privacy claims be subject to the same statute of limitations of six months. For the statute of limitations to be the same as to Plaintiff's slander and false light claims, the application of the discovery rule must be the same in his false light claims as it is in his slander claims. In light of the Supreme Court's holding in *Quality*

Auto Parts that the discover rule does not apply to slander claims, we hold that the discovery rule likewise does not apply to false light invasion of privacy claims based upon spoken words. Therefore, Plaintiff's slander and false light invasion of privacy claims against defendants Lambert and Brown were properly dismissed based on the statute of limitations.[5]

All remaining issues raised by Plaintiff are pretermitted.

Conclusion

The judgment of the Trial Court is affirmed and this cause is remanded to the Trial Court solely for collection of the costs below. Costs on appeal are taxed to the Appellant, Alden Joe Daniel, Jr., and his surety, if any, for which execution may issue, if necessary.

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D. MICHAEL SWINEY, JUDGE

[5] It is for these same reasons that the Trial Court properly concluded that the statutes of limitations also had run on the claims filed against the governmental employees. This Court is aware that there are several other bases upon which the Trial Court could have dismissed the various claims. For the sake of brevity, we have not discussed all the additional reasons these claims should have been dismissed.